

JUL 22 2019

Clerk, U.S. Courts
District Of Montana
Missoula DivisionIN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

ALAN WAYNE WILLIAMS,

Petitioner,

vs.

LYNN GUYER; TIM FOX,

Respondents.

CV 19-12-GF-DLC-JTJ

ORDER

United States Magistrate Judge John T. Johnston entered his Findings and Recommendations on June 6, 2019, recommending that the Court dismiss Petitioner Alan Wayne Williams's petition brought under 28 U.S.C. § 2254 and deny a certificate of appealability. (Doc. 5.) Williams failed to timely object to the Findings and Recommendations, and so waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court reviews for clear error those findings and recommendations to which no party objects. *See Thomas v. Arn*, 474 U.S. 140, 149-53 (1985). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been made." *Wash. Mut., Inc. v. United States*, 856 F.3d 711, 721 (9th Cir. 2017) (citation omitted).

Having reviewed the Findings and Recommendations (Doc. 5), the Court

finds no clear error in Judge Johnston's recommendation that Williams's petition be denied when Williams has alleged only that his state sentence was miscalculated. *See, e.g., Christian v. Rhode*, 41 F.3d 461, 469 (9th Cir. 1994) ("Absent a showing of fundamental unfairness, a state court's misapplication of its own sentencing laws does not justify federal habeas relief.")

Because it is settled law that the federal constitution does not govern state court calculations of state sentences under state law, Williams has not made "a substantial showing of the denial of a constitutional right," and a certificate of appealability will not be issued. 28 U.S.C. § 2253(c)(2); *see also Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Accordingly, IT IS ORDERED:

- (1) Judge Johnston's Findings and Recommendations (Doc. 5) is ADOPTED IN FULL;
- (2) Williams's Petition (Doc. 1) is DENIED for lack of merit;
- (3) A certificate of appealability is DENIED; and
- (4) The Clerk of Court shall enter by separate document a judgment in favor of dismissal.

DATED this 22nd day of July, 2019.



Dana L. Christensen, Chief Judge
United States District Court